

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
P.I. L. NO. 142 OF 2006

Sudam Vithal Hivarkar. .. Petitioner.

vs.

City & Industrial Development
Coporation of Maharashtra
Ltd., & Ors. .. Respondents.

Mr. S. M. Gorwadkar for Petitioner.

Mr. G.S. Hegde for respondent No.1.

Mr. R.S. Apte i/by A.A. GarGe for respondent No.2.

Mr. R.M. Kadam, Advocate General with S.R.

Nargolkar, A.G.P. for respondent nos. 3 & 4.

Mr. R.S. Raghuwanshi i/by Wadia Gandhi & Co.

for respondent Nos. 5 & 11.

Mr. B.B. Saraf i/by M/s. I.C. Legal for R.No.6.

Mr. H.V. Gala for respondent No. 7.

Mr. P.N. Patil for respondent no. 8.

Mr. Virag Tulzapurkar, Sr. Adv. i/by Wadia Gandhi

& Co. for respondent no. 9.

Mr. V.M. Tayade for respondent no. 10.

Mr. J.D. Dwarkadas, Sr. Adv. i/by H.V. Gala & Co.

for respondent no. 13.

CORAM: J.N. PATEL &

A.A. SAYED, JJ.

P.C.

. We have heard the learned counsel for the petitioner, the learned Advocate General and the learned counsel appearing for the respondents at length. We find that this Court is required to hear the petition on merits. It will be proper to put the petitioner on terms as this is a petition filed in public interest.

2. The learned counsel for the petitioner submitted that the petition is required to be heard on merits. This Court on conclusion of hearing in the morning session, clearly expressed that the petitioner has an option to withdraw the petition as this court is not inclined to admit the same and proposes to dismiss the petition with compensatory costs.

3. The learned counsel appearing for the respondents submitted that the petitioner has moved this petition in larger public interest and he is seeking cancellation of resolutions passed by the authorities, and, therefore, this Court should admit the petition and hear it on merits.

4. The matter was kept back in the afternoon session at 3.00 O'Clock to enable the learned counsel

for the petitioner to seek instructions. The petitioner is personally present in the Court and the learned counsel for the petitioner states that he has instructions to get the matter decided on merits.

5. When this Court has come to the conclusion that there is no merit in the petition, it is not the sweet choice of the petitioner to insist that the petition should be heard on merits after issuing rule in the matter.

6. The petitioner has filed this petition challenging the allotment of plots to respondent nos. 5 to 13 at extremely low prices thereby causing huge losses to CIDCO as well as public exchequer which could have been otherwise avoided and this is nothing but the respondent authority, particularly CIDCO, has committed a fraud on public. The subject matter pertains to allotment of plots to respondent nos. 5 to 13 from the strip of land below the high tension line in Sector Nos. 17, 18 and 19 at Sanpada to the adjoining plot owners by permitting them to amalgamate these plots for the purpose of its maintenance and the allottees were permitted to exploit the FSI of the new amalgamated plots.

7. It is not disputed that no construction is permitted in the strip of land below the high tension line and, therefore, condition has been imposed while

allotting the plot that the allottees would keep the land under the Power Corridor permanently open and provide free access to the MSEB Authorities for repairs/maintenance of the power line. In addition to this condition, the allotment is also subject to the condition that no transfer of FSI from one plot to another, as is done in cases related to TDR, would be permitted and that the plots have been allotted to the plot holders who were allotted these plots by following proper procedure of inviting tenders and the plots had been allotted to the respective plot holders at the rate which was realised in tenders by charging them compound interest of 18% on the said amount towards appreciation of the value till the date of allotment and the plots were not allotted at throw away prices as is tried to be canvassed before this Court. It is the case of CIDCO that the funds generated from this allotment are being utilised to meet the liability arising out of the payment of compensation for land acquisition and for rehabilitation of project affected persons by way of allotment of land under 12.5% scheme and cost of development of infrastructure in the New Town Navi Mumbai and, therefore, there is no illegality or irregularity committed while allotting the plots to these persons.

8. The learned counsel for the petitioner has not been able to point out to us as to how these allotment of plots has resulted in loss to CIDCO or the public

exchequer. Further, no person interested in such allotment has come forward. The petitioner being a councillor of Navi Mumbai Municipal Corporation and former Chairman of the Standing Committee was well aware of this allotment but he did not raise any issue in the Corporation or with the authorities and waited for all this time permitting the allottees to carry out their constructions and has now come to this Court challenging the allotments. Therefore, we are of the opinion that this is nothing but an abuse of the process of the Court and that too by a responsible person like the petitioner who is the councillor and former Chairman of the Standing Committee. There is no explanation put forth as to why the petitioner did not raise this issue in the Corporation or before the authorities to stop such allotments and, therefore, he deserves to be saddled with compensatory cost. We, therefore, dismiss this petition with a direction that the petitioner shall pay a sum of Rs. 1 lac each to respondent nos. 1 to 3 and 5 to 13 within a period of six weeks. On failure of the petitioner to pay cost as directed, the Collector, District Thane, shall proceed to recover the same as fine by resorting to the provisions of the Maharashtra Land Revenue Code and on recovering the cost disburse it to the parties as directed by this Court after deducting his charges for recovery of the amount from the petitioner.

9. After we passed the order, the learned counsel

for the petitioner has been instructed by the petitioner that he may be permitted to withdraw the petition. This Court does not want to be unfair to a litigant. Therefore, we recall our order and permit the petitioner to withdraw the petition with a caution that in future he should be careful while invoking the extra ordinary jurisdiction of this Court for espousing any public interest. Petition is dismissed as withdrawn. No order as to costs.

(J.N. Patel, J.)

(A.A. Sayed, J.)